SIEMENS

PATENT
Attorney Docket No. 2002P15759WOUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor:	M. Appel, et al.	) Group Art Unit:	2612
		)	
Serial No.:	10/528,731	) Examiner:	Labbees, Edny
		)	
Filed:	03/22/2005	) Confirmation Number:	8587

Title: METHOD AND APPARATUS FOR MONITORING A TECHNICAL INSTALLATION, ESPECIALLY FOR CARRYING OUT DIAGNOSIS

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APPELLANT'S REPLY BRIEF UNDER 37 CFR 41.41

Sir:

Pursuant to 37 C.F.R. § 41.41, this Reply Brief is responsive to the Examiner's Answer mailed 20 October 2010. This is not a substitute for the Appeal Brief. Any ground for rejection in Examiner's Answer that is not refuted herein is considered by Appellant to have been sufficiently argued in the Appeal Brief, such that no further comment is needed herein. Arguments herein focus on errors and new arguments presented in the Examiner's answer.

With regard to independent claims 12 and 18, the Examiner's rebuttal to argument made in the Appeal Brief begins at page 8 of the Examiner's Answer ("Answer"). Despite argument made in the Appeal Brief, the Answer fails to address deficiencies and inconsistencies in the

rejections. The Examiner does not contend that the prior art must be modified to reject the independent claims. However, in order to sustain the rejections under Section 103, MPEP §2143 provides that the prior art must teach or suggest **all** of the claim limitations. The Answer skirts this requisite and avoids addressing the inconsistencies which result from an effort to read the Torch reference on the claims. Specifics now follow as the rejection is applied to claim 12, but the same basis is to be applied to support allowance of claim 18.

The Answer (page 8) again asserts that the Torch reference concerns a technical installation, but more is required. Claim 12 requires:

analyzing the information recorded with the assessment tool to **diagnose an operational condition of a component of the technical installation.**

While the argument cites passages (e.g., see col. 9, lines 6 - 33 of the Torch reference) relating to controlling a piece of machinery, e.g., when it is determined that a person is becoming drowsy, none of that relates to **diagnosing an operational condition of a component of the technical installation**. Rather, the prior art does no more than determine a condition of a user or patient and control associated equipment. By way of contrast, as described in Appellant's application, according to an embodiment of the invention, the operational condition of a "belt drive" may be diagnosed during multiple plant tours. During those tours, a sensor may acquire the physiological reaction of the worker to the noisy belt; and changes in how long the worker obsrves the belt drive can be used to assess the condition of the belt drive. The point of this example is to demonstrate that the claim reads on "analyzing the information recorded with the assessment tool to diagnose an operational condition of a component of the technical installation." On the other hand, the Torch reference discloses nothing about "diagnos[ing] an operational condition of a component of the technical installation." Instead, the rejection alludes to merely controlling the operation of a piece of equipment in response to drowsiness of an equipment operator.

Another deficiency relates to the requirement for "using a sensor to acquire a physiological reaction ... during an inspection tour ..." The Answer (page 9, last paragraph) argues that Torch discloses "an apparatus that senses the physiological reaction of the operator of the machine . And based on the sensed data determines the state of the machine." This

assertion is misleading and incorrect. The prior art does not use physiological reaction data (referred to - by the Examiner - as sensed data) to determine the state of a machine. This is not to say that parameters such as speed are not monitored according to Torch. Rather, the deficiecy is that Torch does not discose the combination of

"using a sensor to acquire a physiological reaction of a human during an inspection tour ..."

and

"analyzing the information recorded with the assessment tool to diagnose an operational condition of a component ..."

Contrary to the Examiner's assertions at page 9 of the Answer, the Torch reference does not determine the state of a machine based on sensed (physiological) data.

Finally, the assertions at page 9 that the recited feature, that the method operates during an inspection tour is "intended use" and not limiting is new argument made without any basis. The language of claim 12 is express and requires acquiring a physiological reaction of a human **during** an inspection tour.

The above argument has been directed to claim 12. The Board is requested to apply the above points of argument, made in support of claim 12, to claim 18. As for other flawed argument made by in the Answer, these are inconsequential due to the fatal deficiencies in the rejections of independent claims 12 and 18.

Conclusion

For the reasons provided in the previously filed response under Rule 116, then expanded upon in the first and second Appeal Briefs, and based on the deficiencies in the Answer as identified in this Reply Brief, the rejections are in error. The Board is therefore respectfully requested to reverse the final rejection of the Examiner and to remand the application to the Examiner with instructions to allow all of the pending claims.

Please grant any extensions of time required to enter this paper. Please charge any appropriate fees due in connection with this paper or credit any overpayments to Deposit Acct. No. 19-2179.

Respectfully submitted,

Dated: Dec. 16, 2010

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